

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

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JAMES H. HAYES,

Petitioner,

v.

JERRY HOWELL, et al.,

Respondents.

Case No. 2:20-cv-00945-GMN-BNW

ORDER

Petitioner James H. Hayes has submitted a pro se 28 U.S.C. § 2254 habeas corpus petition (ECF No. 1-1). He has paid the filing fee (see ECF No. 3), therefore, his application to proceed in forma pauperis (ECF No. 1) is denied as moot. The court has reviewed the petition pursuant to Habeas Rule 4 and directs that it be served on respondents.

A petition for federal habeas corpus should include all claims for relief of which petitioner is aware. If petitioner fails to include such a claim in his petition, he may be forever barred from seeking federal habeas relief upon that claim. See 28 U.S.C. §2254(b) (successive petitions). If petitioner is aware of any claim not included in his petition, he should notify the court of that as soon as possible, perhaps by means of a motion to amend his petition to add the claim.

1 **IT IS THEREFORE ORDERED** that petitioner's application to proceed in forma
2 pauperis (ECF No. 1) is **DENIED** as moot.

3 **IT IS FURTHER ORDERED** that the Clerk detach, file, and ELECTRONICALLY
4 SERVE the petition (ECF No. 1-1) on the respondents.

5 **IT IS FURTHER ORDERED** that the Clerk add Aaron D. Ford, Nevada Attorney
6 General, as counsel for respondents.

7 **IT IS FURTHER ORDERED** that respondents must file a response to the petition,
8 including potentially by motion to dismiss, within **90 days** of service of the petition, with
9 any requests for relief by petitioner by motion otherwise being subject to the normal
10 briefing schedule under the local rules. Any response filed is to comply with the
11 remaining provisions below, which are entered pursuant to Habeas Rule 5.
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13 **IT IS FURTHER ORDERED** that any procedural defenses raised by respondents
14 in this case be raised together in a single consolidated motion to dismiss. In other
15 words, the court does not wish to address any procedural defenses raised herein either
16 in seriatum fashion in multiple successive motions to dismiss or embedded in the
17 answer. Procedural defenses omitted from such motion to dismiss will be subject to
18 potential waiver. Respondents should not file a response in this case that consolidates
19 their procedural defenses, if any, with their response on the merits, except pursuant to
20 28 U.S.C. § 2254(b)(2) as to any unexhausted claims clearly lacking merit. If
21 respondents do seek dismissal of unexhausted claims under § 2254(b)(2): (a) they will
22 do so within the single motion to dismiss not in the answer; and (b) they will specifically
23 direct their argument to the standard for dismissal under § 2254(b)(2) set forth in
24 *Cassett v. Stewart*, 406 F.3d 614, 623-24 (9th Cir. 2005). In short, no procedural
25 defenses, including exhaustion, should be included with the merits in an answer. All
26 procedural defenses, including exhaustion, instead must be raised by motion to dismiss.
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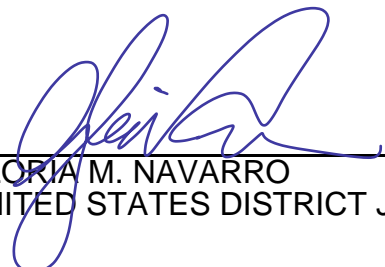
1 **IT IS FURTHER ORDERED** that, in any answer filed on the merits, respondents
2 specifically cite to and address the applicable state court written decision and state
3 court record materials, if any, regarding each claim within the response as to that claim.

4 **IT IS FURTHER ORDERED** that petitioner has **45 days** from service of the
5 answer, motion to dismiss, or other response to file a reply or opposition, with any other
6 requests for relief by respondents by motion otherwise being subject to the normal
7 briefing schedule under the local rules.

8 **IT IS FURTHER ORDERED** that any additional state court record exhibits filed
9 herein by either petitioner or respondents be filed with a separate index of exhibits
10 identifying the exhibits by number. The parties will identify filed CM/ECF attachments
11 by the number or numbers of the exhibits in the attachment.

12 **IT IS FURTHER ORDERED** that, at this time, the parties send courtesy copies of
13 **any responsive pleading or motion and all INDICES OF EXHIBITS ONLY** to the
14 Reno Division of this court. Courtesy copies shall be mailed to the Clerk of Court, 400
15 S. Virginia St., Reno, NV, 89501, and directed to the attention of "Staff Attorney" on the
16 outside of the mailing address label. **No further courtesy copies are required unless**
17 **and until requested by the court.**

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20 DATED: June 29, 2020
21 [REDACTED]

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24 _____
25 GLORIA M. NAVARRO
26 UNITED STATES DISTRICT JUDGE
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